

REMARKS**I. General**

Claims 1-4, 6-34, 36-47 and 62-63 are pending in this application.

- Claims 1, 6, 9-16, 22, 33, 34, 36, 37, 42-45, and 47 are rejected under 35 U.S.C. § 102(e) as being unpatentable in view of United States Patent No. 6,704,579 to Woodhead et al. (hereinafter “Woodhead”);
- Claims 2 and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of U.S. Patent Publication 2004/0203714 A1 to Van Lieshout et al. (hereinafter “Van Lieshout”).
- Claims 3 and 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of U.S. Patent Publication 2002/0196749 A1 to Eyuboglu et al. (hereinafter “Eyuboglu”).
- Claims 4 and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of U.S. Patent Publication 2002/0174441 A1 to Marin et al. (hereinafter “Marin”).
- Claims 7, 8, 62, and 63 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of U.S. Patent 6,275,990 B1 to Dapper et al. (hereinafter “Dapper”).
- Claims 17-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of U.S. Patent Publication 2002/0126704 A1 to Cam et al. (hereinafter “Cam”).
- Claim 21 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of Cam and further in view of U.S. Patent Publication 2003/0043738 A1 to Barsheshet (hereinafter “Barsheshet”).
- Claims 23-27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of Schilling (hereinafter “Schilling”).

- Claims 28-32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead.
- Claims 41 and 46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of Barsheshet.

Applicant hereby traverses the rejections of record and requests reconsideration and withdrawal of such in view of the remarks contained herein.

II. Rejection Under 35 U.S.C. § 102

Claims 1, 6, 9-16, 22, 33, 34, 36, 37, 42-45, and 47 are rejected under 35 U.S.C. § 102(e) as being unpatentable in view of Woodhead. It is well settled that to anticipate a claim, the reference must teach every element of the claim. *See* M.P.E.P. § 2131. Moreover, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he elements must be arranged as required by the claim.” *See* M.P.E.P. § 2131; *citing In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Furthermore, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *See* M.P.E.P. § 2131; *citing Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989).

Independent claim 1 recites a first and second subscriber subsystem each “disposed at a subscriber location.” In the Current Action the Examiner apparently attempts to satisfy the recited subscriber location by pointing to Woodhead’s base station coverage area. *See* Current Action, pg. 3. In doing so, the Examiner opines that Woodhead’s base station “inherently must be located at a subscriber location since subscribers must be within the base station’s wireless range to be able to communicate wirelessly.” *Id.* As an initial matter, Applicant notes that the coverage area of a base station is understood by those of ordinary skill in the art as, for example, a “cell.” Further, one of ordinary skill in the art would understand that a cell is not the same as a subscriber location. A subscriber location may be at any number of locations within a cell. In any event, a base station is not required to be, and in all likelihood is not, at a subscriber location. *Also see* Woodhead at col. 6 lines 61-66 (describing that a cell is a coverage area that includes several CPE at *different* areas). According to the Examiner’s rationale, a subscriber location could be construed as covering

several square miles. This, of course, is nonsensical. Further, Applicant notes that Woodhead describes its base station as not being at a subscriber location. Indeed, Woodhead describes its base station as “centrally located *from* a plurality of customer sites.” *See* Woodhead at col. 5 lines 24-25. Further, Woodhead expressly refers to its subscribers as “residential or business customers,” not base stations. *Id.* at col. 11 lines 30-40. Therefore, Applicant requests withdrawal of the rejection of record.

Independent claim 33 recites “said first subscriber subsystem disposed at a subscriber location” and “a second subscriber subsystem disposed at said subscriber location.” In the Current Action the Examiner apparently attempts to satisfy the recited subscriber location by pointing to Woodhead’s base station coverage area. *See* Current Action, pg. 6. In doing so, the Examiner opines that Woodhead’s base station “inherently must be located at a subscriber location since subscribers must be within the base station’s wireless range to be able to communicate wirelessly.” *Id.* As an initial matter, Applicant notes that the coverage area of a base station is understood by those of ordinary skill in the art as, for example, a “cell.” Further, one of ordinary skill in the art would understand that a cell is not the same as a subscriber location. A subscriber location may be at any number of locations within a cell. In any event, a base station is not required to be, and in all likelihood is not, at a subscriber location. *Also see* Woodhead at col. 6 lines 61-66 (describing that a cell is a coverage area that includes several CPE at *different* areas). According to the Examiner’s rationale, a subscriber location could be construed as covering several square miles. This, of course, is nonsensical. Further, Applicant notes that Woodhead describes its base station as not being at a subscriber location. Indeed, Woodhead describes its base station as “centrally located *from* a plurality of customer sites.” *See* Woodhead at col. 5 lines 24-25. Further, Woodhead expressly refers to its subscribers as “residential or business customers,” not base stations. *Id.* at col. 11 lines 30-40. Therefore, Applicant requests withdrawal of the rejection of record.

Claims 6, 9-16, 22, depend from claim 1, and claims 34, 36, 37, 42-45 depend from claim 33, respectively. Each dependent claim inherits every limitation of the claim from which it depends. As shown above, Woodhead does not satisfy every limitation of claims 1 and 33. As such, claims 6, 9-16, 22, 34, 36, 37, and 42-45 are patentable at least through their dependency on claims 1 and 33. Moreover, the dependent claims set forth additional limitations not taught by Woodhead.

For example, claim 9 recites “wherein said first digital interface comprises a fiber optic interface.” In the Current Action the Examiner points to Woodhead, a col. 7 lines 7-20, as satisfying this limitation. *See* Current Action, pg. 4. However, at the Examiner’s citation Woodhead describes that backhaul 116 may comprise a fiber optic cable. Of course, backhaul 116 is not the same as the recited first digital interface. That is, backhaul 116 connects cell sites 104 to a communications hub 114. According to the Examiner’s own rationale, communications hub 114 is not a first subscriber station or a second subscriber station. Therefore, Applicant requests withdrawal of the rejection of record.

III. Rejections Under 35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int’l. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007) (citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Applicant. *Piasecki*, 745 F.2d at 1472, 233 USPQ at 788. Thus, the Examiner must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the Examiner’s conclusion. Moreover, to support an obviousness rejection, “[u]nder § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.” *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 15 - 17 (1966). As will be discussed, with regard to the rejections under 35 U.S.C. § 103(a), the Examiner has failed to show that the pending claims are obvious under the framework set out in *Graham*. That is, the Examiner has failed to ascertain the differences between the cited references and the pending claims. Therefore, Applicant requests that such rejections be withdrawn.

- A. Claims 2 and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of Van Lieshout.

Claim 2 depends from claim 1 and claim 38 depends from claim 33, respectively. As shown above, Woodhead does not satisfy every limitation of claims 1 and 33. Moreover, Van Lieshout is not relied upon to satisfy the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- B. Claims 3 and 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of Eyuboglu.

Claim 3 depends from claim 1 and claim 39 depends from claim 33, respectively. As shown above, Woodhead does not satisfy every limitation of claims 1 and 33. Moreover, Eyuboglu is not relied upon to satisfy the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- C. Claims 4 and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of Marin.

Claim 4 depends from claim 1, and claim 40 depends from claim 33, respectively. As shown above, Woodhead does not satisfy every limitation of claims 1 and 33. Moreover, Marin is not relied upon to satisfy the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- D. Claims 28-32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of Chauncey.

Claims 28-32 depend from claim 1 and inherit every limitation therefrom. As shown above, Woodhead does not satisfy every limitation of claim 1. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- E. Claims 7, 8, 13, 62, and 63 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of Dapper.

Claims 7, 8, 13, 62, and 63 depend from claim 1 and inherit every limitation therefrom. As shown above, Woodhead does not satisfy every limitation of claim 1. Moreover, Dapper is not relied upon to satisfy the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- F. Claims 17-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of Cam.

Claims 17-20 depend from claim 1 and inherit every limitation therefrom. As shown above, Woodhead does not satisfy every limitation of claim 1. Moreover, Cam is not relied upon to satisfy the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- G. Claim 21 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of Cam and further in view of Barsheshet.

Claim 21 depends from claim 1 and inherits every limitation therefrom. As shown above, Woodhead does not satisfy every limitation of claim 1. Moreover, Barsheshet is not relied upon to satisfy the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- H. Claims 23-27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of Schilling.

Claims 23-27 depend from claim 1 and inherit every limitation therefrom. As shown above, Woodhead does not satisfy every limitation of claim 1. Moreover, Schilling is not relied upon to satisfy the missing limitations, nor does it do so. As such, these claims set

forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- I. Claims 41 and 46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Woodhead in view of Barsheshet.

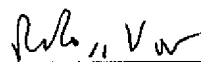
Claims 41 and 46 are depend from claim 33 and inherit every limitation therefrom. As shown above, Woodhead does not satisfy every limitation of claim 33. Moreover, Barsheshet is not relied upon to satisfy the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

IV. Conclusion

Applicant believes no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 06-2380, under Order No. 68144/P007US/10501224 from which the undersigned is authorized to draw.

Dated: November 1, 2007

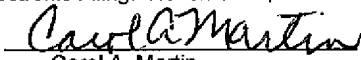
Respectfully submitted,

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